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September 4, 2009

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 27, 2009

Case Number: TSO-0739

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual's suspended access authorization should be restored. 1/

I. BACKGROUND

In July 2008, the DOE conducted a Personnel Security Interview with the individual (the 2008 PSI) regarding his misuse of alcohol. In addition, the individual was evaluated in September 2008 by a DOE-consultant psychiatrist (the DOE-consultant Psychiatrist), who issued a Psychiatric Evaluation Report (the "September 2008 Report") setting forth his conclusions and observations. DOE Exhibit 13.

The Manager of the DOE area office where the individual is employed (the Manager) suspended the individual's access authorization and, on January 26, 2009, he issued a Notification Letter to the individual. DOE Exhibit 3. Enclosure 2 to this letter, which is entitled "Information Creating a Substantial Doubt Regarding

1/ Decisions issued by the Office of Hearings and Appeals (OHA), with names and other personal identifying information deleted, are available on the OHA website located at <http://www.oha.doe.gov>. The text of a cited decision may be accessed by entering the case number of the decision in the search engine at <http://www.oha.doe.gov/search.htm>.

Eligibility for Access Authorization," states that the individual's behavior has raised security concerns under Sections 710.8(h), (j) and (l) of the regulations governing eligibility for access to classified material (Criteria H, J and L). 2/ Specifically, the Enclosure states that the DOE-consultant Psychiatrist diagnosed the individual as meeting the criteria for "Alcohol Abuse", as specified in the Diagnostic and Statistical Manual of Mental Disorders IV-TR (DSM-IV TR). He further concluded that this illness causes, or may cause, a significant defect in the individual's judgment or reliability. Such a condition raises security concerns under the provisions of Criteria H and J. In this regard, Enclosure 2 also lists the following information concerning the individual's misuse of alcohol:

1. He admitted that his last use of alcohol was July 4, 2008, which is after his counseling and treatment program began in June 2008;
2. On June 16, 2008, he tested positive for alcohol during a baseline test for Human Reliability Program (HRP) access to his work site. The readings were 0.11 at 8:56 a.m. and 0.10 at 9:13 a.m.;
3. He admitted consuming a quart of liquor in mixed drinks on the evening of June 15, 2008. He also reported drinking at least two beers every day, and he acknowledged having a problem with alcohol on holidays and at family gatherings;

2/ Criterion H concerns involve information that an individual has an illness or mental condition which, in the opinion of a psychiatrist causes, or may cause, a significant defect in the individual's judgement or reliability. 10 C.F.R. § 710.8(h). Criterion J concerns involve information that an individual "has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependant or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j). Criterion L concerns relate, in relevant part, to information that a person "[e]ngaged in any unusual conduct or is subject to any unusual circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security" 10 C.F.R. § 710.8(l).

4. His spouse has expressed concern regarding his alcohol consumption, but he is unwilling to personally consider it to be a concern;

5. He has a family history of alcohol problems;

6. On July 7, 2003, he was arrested for Driving Under the Influence, and his blood alcohol test result was 0.19; and

7. In May 1978, he was charged with possessing an open beer container while in a motor vehicle.

With respect to Criterion L, Enclosure 2 states that the individual's 2003 arrest for Driving Under the Influence and his 1978 open beer container charge indicate that he has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy, thereby raising a security concern under the provisions of Criterion L. See Enclosure 2 to Notification Letter, DOE Exhibit 3.

II. *THE JUNE 2009 HEARING*

At the individual's request, a hearing was convened in June 2009 to afford him an opportunity to submit information to resolve these concerns. At the hearing, testimony was received from eight persons. The DOE presented the testimony of the DOE-consultant Psychiatrist. The individual, who was represented by counsel, testified and presented the testimony of a staff psychologist at the individual's work site (the Staff Psychologist), the individual's Alcoholics Anonymous (AA) sponsor, the individual's wife, his sister, his supervisor, and his section manager.

Also scheduled to testify at the hearing was the individual's counselor, a licensed clinical social worker, who the individual has consulted on five occasions since February 2009. However, the individual's counsel stated at the hearing that, by oversight, she had failed to confirm the counselor's availability for the hearing date and that, on the morning of the hearing, the counselor had told her that she was unavailable because she was undergoing medical tests. See Hearing Transcript (TR) at 129, letter from individual's counselor to individual's counsel submitted on July 8, 2009. The counselor's "Assessment/Evaluation" of the individual, written after a May 26, 2008, telephone conversation with the individual and submitted by the individual's counsel June 9, 2009, indicates her positive assessment of the individual's rehabilitation efforts.

The hearing testimony focused on the individual's efforts to corroborate his alleged period of abstinence from alcohol beginning on July 4, 2008, on the individual's rehabilitation efforts, and on the opinions of the DOE-consultant Psychiatrist and the Staff Psychologist concerning those rehabilitation efforts. The individual's counsel submitted a post-hearing assessment by the Staff Psychologist, which was written following a July 9, 2009 meeting with the individual.

III. APPLICABLE STANDARDS

A DOE administrative review proceeding under this Part is not a criminal case, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. In this type of case, we apply a different standard, which is designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d).

This standard implies that there is a presumption against granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security test" for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. *Personnel Security Hearing*, Case No. VSO-0002 (1995).

Once a security concern has been found to exist, the individual has the burden of going forward with evidence to rebut, refute, explain, extenuate or mitigate the allegations. *Personnel Security Hearing*, Case No. VSO-0005 (1995), *aff'd*, Case No. VSA-0005 (1995). See also 10 C.F.R. § 710.7(c).

IV. ANALYSIS OF TESTIMONY AND FINDINGS

The derogatory information under Criteria H, J and L involves the individual's alcohol problem. With respect to Criteria H and J, it

is beyond dispute that a diagnosis of alcohol abuse or dependence raises security concerns. See, e.g., *Personnel Security Hearing*, Case No. VSO-0234 (2002). The arrest and the charge giving rise to the Criterion L concern both involve the individual's problem with alcohol consumption, and they raise serious concerns regarding his reliability associated with his pattern of excessive alcohol consumption. The individual does not dispute that he has an alcohol problem, nor does he deny the alcohol-related arrest and charge. Rather, in an attempt to mitigate the Criteria H, J and L concerns, he contends that he is now rehabilitated from his alcohol problem.

A. The Individual Was Properly Diagnosed with Alcohol Abuse

In his September 2008 Report, the DOE-consultant Psychiatrist evaluated the individual's alcohol problem and diagnosed the individual with Alcohol Abuse, although he noted that the individual met some criteria for Alcohol Dependence. September 2008 Report at 8. In his hearing testimony, the DOE-consultant Psychiatrist employed the Alcohol Abuse diagnosis as his basis for evaluating whether the individual has achieved rehabilitation from his alcohol problem. TR at 132-134. I have reviewed the information in the record and find that, despite some evidence of disagreement by the medical professionals who have evaluated the individual, the Alcohol Abuse diagnosis discussed in the September 2008 Report is the appropriate diagnosis to use in this proceeding. The Staff Psychologist testified that when the individual tested positive for alcohol in the workplace in June 2008, he "likely met the criteria for alcohol abuse or dependence", but that he did not attempt to diagnose the individual before referring him for treatment. TR at 117-118. The individual's Counselor, who did not testify, noted in her May 2009 Assessment/Evaluation that the treatment program that the individual attended in June and July 2008 diagnosed the individual as alcohol dependent, and that she accepted that diagnosis. Assessment/Evaluation at 3. However, the basis for the recovery program's diagnosis is not presented in the Assessment/Evaluation or elsewhere in the record of this proceeding. Under these circumstances, I accept the DOE-consultant Psychiatrist's diagnosis of Alcohol Abuse as the appropriate basis for the DOE's Criteria H and J concerns, and will now consider whether the individual has demonstrated rehabilitation from his condition.

B. The Individual's Assertions Regarding His Past Use of Alcohol and His Current Sobriety

The individual testified that he last consumed alcohol to intoxication on the night of June 15, 2008. He explained that after a Father's Day celebration at his parent's house, he became depressed because he was separated from two of his sons, who had been taken by a former wife to live in another country. He testified that he arrived home from the celebration before his present wife, so that he could be by himself and drink. TR at 82.

After he tested positive for alcohol in the workplace on June 16, 2008, the individual followed the advice of the Staff Psychologist and completed an eight week intensive outpatient alcohol recovery program followed by intensive AA participation beginning in August 2008. ^{3/} He admitted, however, that while still in the recovery program, he relapsed and consumed alcohol on one occasion. On July 4, 2008, he started to consume a beer at an outdoor celebration, and immediately felt bad about it. He testified that when he returned home, his wife smelled the alcohol, and he felt defeated and embarrassed. He stated that the experience was "a kick in the pants" concerning his vulnerability to alcohol. The individual testified that his last consumption of alcohol was that beer on July 4, 2008. TR at 85-86. He stated that when he consumed the beer on July 4, 2008, he had not yet realized that he needed to remain completely abstinent from alcohol. He testified that he now understands that as an alcoholic, he cannot consume any alcohol. TR at 98.

The individual testified that he remains actively involved in AA and intends to remain involved in the future. TR at 86. He stated that during his first few months of attendance at AA meetings he was fairly quiet, but that now he participates a lot more. The record indicates that the individual has known his AA sponsor from group meetings since August 2008, and has worked with him as an AA sponsor since February 25, 2009, when he followed the recommendation of his alcohol counselor to find an AA sponsor. See TR at 49, May 26, 2009 Assessment/Evaluation at 2-3. The individual testified that AA has given him a great deal of social support, and has helped him to learn a lot about himself. He

^{3/} In a sworn affidavit dated March 17, 2009, the individual states that he completed the intensive outpatient program followed by a "90 AA meetings in 90 days" program. See Affidavit attached to Individual's March 17, 2009 response to the Notification Letter.

stated that his recovery program has helped him to avoid building up resentments and to avoid feeling victimized by others. He testified that he now realizes that he has been a perfectionist with unrelenting standards, and that he has come to realize that his personal serenity is related to his ability to accept the unpleasant circumstances in his life, such as his sons residing in another country. TR at 86-89. He stated that he intends to continue AA indefinitely in order to support his sobriety and as a way of giving help and support to others. TR at 93.

C. Corroboration of Abstinence Since July 4, 2008

At the hearing, the individual submitted testimony and evidence to corroborate his sobriety. The individual's AA sponsor testified that the individual now attends AA meetings three to four times a week and currently is working with him on Step 4 of the 12 AA steps. He testified that he has sponsored many individuals in the past, and that he believes that the individual is genuine in his AA commitment, that he is serious about making the necessary changes in his life, and that he now understands that alcohol is not a solution to the problems of life. TR at 43-48. He testified that he has known the individual since he began attending AA meetings in August 2008, and believes that the individual has maintained his abstinence since then. TR at 49, 52. He stated that he does not believe that the individual has any urge to drink at this time, and that he would be able to detect such an urge from their conversations. TR at 50.

The individual's wife testified that she met the individual in 2005, and that they were married in 2006. She stated that the individual has been upset for six or seven years with his ex-wife taking his sons to live in another country, and that his recovery program has helped him to open up and share his emotions around that situation with herself and others. TR at 19-20. She stated that her husband likes AA, and that they have increased their acceptance of the AA steps by matching them up with appropriate Bible verses. TR at 21. She testified that they keep no alcohol in their home. TR at 34. She stated that the individual has told her and his siblings that he is an alcoholic. TR at 22. She stated that the individual attends AA frequently and works the AA steps, and she believes that he has consumed no alcohol since the July 4, 2008, relapse. Tr at 19, 35.

The individual's sister testified that she sees her brother once or twice a week, and that she believes that the individual has stopped drinking alcohol and is committed to his AA program and to working with his counselors. TR at 68, 70. She stated that she has

noticed how the individual has opened up emotionally in the last year. TR at 61. She stated that alcohol is not present at family gatherings, and that she has never witnessed the individual consume alcohol. TR at 68, 72.

The individual's section manager testified that since the individual came to work in his department after his security clearance was suspended in 2008, he has had no problems with the individual's job performance, that he always arrives at work early, and that he takes little or no sick leave. TR at 57, see also Individual's Hearing Exhibit 1 (Absence Reporting Print-Out from the individual's workplace indicating that the individual used one day of sick leave in 2008 and no sick leave in 2009). The individual's supervisor testified that he has worked with the individual for approximately one year, and that the individual is proficient at his job, dependable and trustworthy. TR at 11. Both the section manager and the supervisor stated that the individual has made positive comments to them about his AA program. TR at 13, 57.

Finally, the Staff Psychologist testified that he has met with the individual sixteen times since June 2008 to monitor his recovery activities, and he believes that the individual has maintained his sobriety since his July 4, 2008, relapse. TR at 118-119. In addition, he notes that in December 2007, the individual had a very high GGT (gamma glutamyl transpeptidase) reading on his liver function tests, which can indicate a high level of alcohol consumption. He stated that a test taken in June 2009 indicated that all of the individual's liver enzymes are back within normal limits. TR at 122, Individual's Hearing Exhibit 3.

Based on this testimony, I find that the individual has effectively corroborated his assertion that he has not consumed alcohol since he consumed one beer on July 4, 2008. The individual's wife confirmed that he has not consumed alcohol in their home, and the individual's ongoing and active involvement in AA, corroborated by his wife, his sister, and his AA sponsor, support his ongoing commitment to sobriety. Finally, his section manager's and supervisor's testimony indicates no attendance issues, and his 2009 liver enzyme levels raise no concerns about possible continued alcohol consumption. Accordingly, I conclude that the individual has established that he last consumed alcohol on July 4, 2008, and that as of the date of the hearing had been abstinent from alcohol for more than eleven and a half months.

D. *Rehabilitation and Risk of Relapse*

In the administrative review process, it is the Hearing Officer who has the responsibility for deciding whether an individual with alcohol problems has established rehabilitation or reformation. See 10 C.F.R. § 710.27. The DOE does not have a set policy on what constitutes rehabilitation and reformation from alcohol diagnoses, but instead makes a case-by-case determination based on the available evidence. Hearing Officers properly give a great deal of deference to the expert opinions of psychologists and other mental health professionals regarding the likelihood of relapse. See, e.g., *Personnel Security Hearing*, Case No. VSO-0027 (1995) (finding of rehabilitation); *Personnel Security Hearing*, Case No. VSO-0015 (1995) (finding of no established rehabilitation).

After hearing the testimony of the individual and his other witnesses, the Staff Psychologist testified that after monitoring the individual for almost a year, he believed that a very genuine and solid recovery process has unfolded for him. TR at 118. He stated that he believed that the individual's July 4, 2008, relapse was good for him, because it helped him to break through his denial regarding the impact that alcohol had on him, and to derive greater benefit from his recovery program, his AA participation, and his alcohol counseling. TR at 119. The Staff Psychologist testified that the individual has a very good prognosis because he is receiving sobriety support from his family, and because he has a supportive work environment where he has shared his alcohol problem with his management. He also stated that the individual has been able to follow the guidance provided by his treatment program and AA, and to begin working on alcohol-related emotional issues with his alcohol counselor. TR at 120. He stated that he believes that the individual is brutally self-honest, and now that he has dealt with his sense of shame about being alcoholic, he has accepted his need for continuing sobriety support and has remained abstinent during a very stressful year. TR at 121-123. The Staff Psychologist concluded that individual's risk of relapse is now low, and with a full year of sobriety from July 4, 2008, he would consider the individual rehabilitated. In a July 9, 2009 letter, the Staff Psychologist stated that on that date he had interviewed the individual and ascertained that the individual has continued to demonstrate resolve and commitment to his recovery process for a full year since his sobriety date. See July 9, 2009, letter from the Staff Psychologist to the individual's counsel.

After hearing the testimony of the individual and his witnesses, including the Staff Psychologist, DOE-consultant Psychiatrist testified that he believed that the individual was making excellent

progress and was doing all of the right things to support his sobriety. TR at 132. While he expressed some concern that the individual had not expressed more of a fear of alcohol or more fully acknowledged the extent of his past alcohol consumption, he stated that he shared the conclusions of the Staff Psychologist that the individual has achieved tremendous insight into his condition over the past year, and has demonstrated a strong commitment to his recovery program. He concluded that "we are at about a year" of sobriety, and that the individual now is rehabilitated and at a low risk for relapse. TR at 134-135, 138.

In general, medical professionals believe that remaining sober for a full year is a significant watershed in the process of reaching rehabilitation and reformation, and a good indicator of commitment to sobriety. See *Personnel Security Hearing*, Case No. VSZ-0276 (2000), and cases cited therein. 4/ In this instance, the hearing took place when the individual had been sober for more than eleven and a half months, and the post hearing letter from the Staff Psychologist convinces me that the individual has demonstrated a full year of sobriety. 5/

I agree with the testimony of the Staff Psychologist and the DOE-consultant Psychiatrist that a year of sobriety is sufficient for this individual to establish rehabilitation. 6/ My positive assessment of the individual's demeanor and of the evidence presented at the hearing convinces me that the individual has

4/ In this regard, I note that medical professionals often require a full year of abstinence to establish rehabilitation, because a one year abstinence period allows an individual to go through a sufficient number of ups and downs that normally occur within a year to test whether he can withstand normal stresses without turning to alcohol. See *Personnel Security Hearing*, Case No. TSO-0150 (2005).

5/ The letter from the Staff Psychologist also indicates that the individual successfully coped with an overseas trip to visit with his ex-wife and his sons in late June and early July 2009. I therefore find that the individual has demonstrated that he can deal with significant stressors that can trigger relapses.

6/ In her May 2009 Assessment/Evaluation, the alcohol counselor also states that this individual will achieve "Full Sustained Remission" from her Alcohol Dependence diagnosis after completing one year of sobriety and recovery activities. Assessment/Evaluation at 3.

accepted his problem with alcohol and is highly committed to his ongoing sobriety. Moreover, he has developed the personal insight and the support network necessary to maintain his sobriety and to avoid relapses. I find that he is actively engaged in frequent AA meetings, is working with his AA sponsor, and is engaged in counseling. Accordingly, I conclude that the individual has established rehabilitation and reformation from his diagnosis of alcohol abuse after twelve months of sobriety and participation in recovery activities. Consequently, I believe that the individual has mitigated the Criteria H and J derogatory information. Because I find that the Criterion L concerns have their basis in the individual's problems with alcohol, I find that the security concerns raised by the Criterion L derogatory information have also been mitigated.

V. CONCLUSION

For the reasons set forth above, I find that the individual's diagnosis of Alcohol Abuse raises Criteria H and J concerns, and that his alcohol-related legal problems raise a concern under Criterion L. Further, I find that this derogatory information under Criteria H, J and L has been mitigated by sufficient evidence of rehabilitation. Accordingly, after considering all of the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. It is therefore my conclusion that the individual's suspended access authorization should be restored. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: September 4, 2009